Verizon, Big Cable and Cartelization of the U.S. Broadband Market: An *Ex Parte* Presentation *As Updated 5/21/2012*

In the Matter of

Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses

WT Docket No. 12-4

Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses

Alan Pearce, Ph.D.
Barry Goodstadt, Ph.D
Martyn Roetter, D.Phil
May 22, 2012

Information Age Economics



Agenda

- We have analyzed the likely impact of the proposed Verizon Wireless-SpectrumCo-Cox Applications.
- We have drawn a number of significant conclusions regarding the consequences of this proposal—but we have not had access to confidential material provided by the Applicants particularly as they relate to the Commercial Agreements¹.
- Since the Applicants have been reluctant to publicly release information about the Commercial Agreements, we suspect that details found in the confidential material will strengthen our conclusions, not weaken them.
- This analysis has focused on the implications of the transactions on both fixed and mobile broadband. Therefore, unlike many who have commented, our conclusions are not restricted to a spectrum-focused approach, but also analyze the potential for anti-competitive activities arising from the Commercial Agreements.
- While the Applicants assert that the spectrum and Commercial Agreement aspects of the transaction are separate, they have themselves provided quotes as evidence that these two elements are, indeed, integrated². As a result, we have analyzed them as an integrated proposition.
- This presentation has been updated to take into account recent events in mid-May. This additional information supports the position we took in the earlier version of this document.

¹The Agreements involve Joint Marketing Agreements and the creation of a Joint Operating Entity for R&D in integrated wireline/wireless technologies and services, which will likely build a portfolio of shared patents for the Applicants.

² In a <u>Politico</u> interview of March 8, David Cohen, Executive Vice President of Comcast stated: "The transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements."



Agenda

Our conclusions are focused on:

- 1. The competitive situation in broadband as it exists today, and the risks that the market faces in the future.
- 2. The impact on the broadband market should the proposals by Verizon and the four major cable MSOs be approved by the FCC and the DOJ.

On the basis of these conclusions, we recommend that the transactions be rejected in their entirety.



The Fixed and Wireless Broadband Market in 2012

- It is clear that the intensity of competition in the US fixed and wireless broadband market has diminished over the past ten years—this is counter to the intent of the 1996
 Telecommunications Act and the 2010 National Broadband Plan.
- Set forth in the 1996 Telecommunications Act are two potential bases for broadband competition—intra-modal competition and inter-modal competition.
- One basic element of competition—access network sharing and unbundling obligations in the broadband market—has already almost disappeared, preventing any meaningful intra-modal competition.
- The fixed broadband market is now dependent upon inter-modal competition among telephone and cable networks that are not permitted to conspire, collaborate or cooperate the existence of such cooperation results in an end to bi-modal competition.
- At present, the speeds and prices of broadband in the U.S. are currently in the middle of the rankings of countries at comparable levels of wealth and economic development—we are not now a leader in broadband deployment!
- Mobile broadband is complementary to, not a substitute for, fixed broadband.
- The two dominant mobile networks (Verizon and AT&T) are also dominant fixed network operators along with the major cable MSOs (Comcast and Time Warner), also dominant in fixed broadband in their "Cable TV Franchised" markets.



Elimination of Competition in the U.S. Broadband Market

- The proposed collaboration/cooperation (not competition) between Verizon Wireless and the four major MSOs (in their Commercial Agreements) will erode the foundation of vigorous broadband competition, which is ESSENTIAL for inter-modal competition.
- If approved, this proposed collaboration/cooperation will enable the petitioners to control network access, the deployment of new technologies/services/applications, service pricing and conditions, etc., in a large number of metropolitan areas.
- Approval of the Petitioners' proposal will result in:
 - A national wireless duopoly of Verizon Wireless and AT&T.
 - The formation of two cartels—one for each member of the wireless duopoly who will collaborate with Cable MSOs to create a single supplier of high speed (>3-5 Mbps download) fixed broadband access in a majority of significant markets in the U.S.²
 - Approval of the petitioner's proposal would put in place Commercial Agreements that could potentially be changed at will by the participants.

² In a February 2, 2012 interview with <u>Fierce Cable</u>, AT&T's CEO Randall Stephenson_noted that AT&T has not opposed the deals that Verizon has struck to market mobile phone and data services in joint promotions with Comcast, Time Warner Cable and other cable MSOs. CEO Randall Stephenson suggested that "the company may be open to crafting similar agreements with cable operators".



Elimination of Competition in the U.S. Broadband Market (contd.)

- Approval of the Petitioners' proposal will result in:
 - A monopsony structure confronting third party owners/providers/distributors of video content and other services that depend on access to broadband networks in order to reach their customers.
 - Cartels(s) whose networks and services cannot be readily regulated by the FCC in light of the regulatory structure that is currently in place for broadband and wireless services.
 - The growing capabilities of Deep Packet Inspection (DPI) Technology will enable them to interfere with innovative services and customers' choices to protect their own revenues.³
 - Several building blocks of the cartel(s) are already visible:
 - Customers in several urban areas already have ONLY ONE choice (cable) if they want high speed fixed broadband (>3-5 Mbps download)—Verizon FiOS stopped its build-out in these areas and has stopped offering copper-based DSL in others.
 - Verizon and AT&T have been able, by tacit coordination, to establish an effective duopoly in "beachfront spectrum" based on their legacy, zero cost inheritance of 850 MHz frequencies, and their separate unilateral introduction of non-interoperability in the Upper and Lower 700 MHz bands respectively.⁴
 - Verizon, Comcast and Time Warner Cable have pre-empted the review process of their proposal by implementing Joint Marketing agreements in several cities e.g. Seattle, LA, beginning in early 2012 – without asking for FCC and DOJ approval.

³ David Cohen asserted in a March 11, 2008 filing to the FCC on Broadband Industry Practices that the FCC has no legal power to stop Comcast from engaging in what it calls "network management practices" (critics call it peer-to-peer traffic blocking) "In re Broadband Industry Practices," WC Docket No. 07-52, http://apps.fcc.gov/ecfs/document/view?id=6519866175

⁴ Verizon thereby flouted the intent of the "open device" condition attached to its Upper C Block frequencies.



Verizon Telecom Argues That They Are Not a Party to the Commercial Agreements—But Verizon is Inseparable from Verizon Wireless (VZW)

In its Joint Opposition Filing to the Petitions to Deny (March 2, 2012) Verizon boldly asserts (p.274) that "Verizon Telecom is not a party to the Commercial Agreements (CA) and will receive no information or data from the MSOs concerning implementation of the agreements. But:

- VZW and Verizon are joined in bundled offerings (e.g., Verizon Digital Media Services, Home Fusion LTE Service) and have common commercial interests—the public's perception is that they operate together, because they do. Furthermore the Joint Operating Entity (JOE) between VZW and the cable MSOs is aimed at developing technologies to integrate wired video, voice and high-speed Internet with wireless technologies.
- VZW is 55% owned by Verizon and there is frequent speculation Verizon will buy out Vodafone, which owns 45% of VZW. VZW is clearly the "jewel in the crown" of Verizon and it is utterly implausible that its deals with the cable MSOs would not have involved Verizon Corporate.
- Verizon approves all key VZW decisions, e.g., dividend payments. Was Verizon Corporate involved in negotiating these deals with the MSOs? Should the records be subpoenaed?
- The financial community does not see them as separate—why should the FCC?
- Verizon Corporate management has been heavily involved in the filings—it is NOT plausible that they do not know what is in the CAs.
- The current CEO of Verizon (Lowell MacAdam) was formerly the CEO of VZW.
- Most existing competitors, who are the competitive targets of the CAs, depend upon parties to the <u>CAs</u> in order to deliver their services or complete their bundles
 - CenturyLink resells VZW, over-the-top providers, e.g., Skype, Netflix, HBO Go, rely upon fixed broadband networks for service delivery.
 - The resale agreements implicit in the CAs allow the MSOs to purchase VZW at wholesale rates which gives the applicants an opportunity to control pricing—which hurts smaller wireless carriers that had great difficulty getting data roaming agreements from VZW.



Future Broadband Scenarios

- 1. Approval of this transaction will set a precedent for the formation of a second cartel between AT&T and cable companies.
- 2. The resultant "cartelization" will inhibit and/or block the development and launch of new T-I-E technologies, services and applications that will benefit the American public.
- 3. This will lead to:
 - Higher prices for wireless and wired services, lower performance, less coverage and limited consumer choice.
 - Fewer broadband dependent opportunities for economic development and employment growth.
 - Degradation of the US competitive broadband position.
 - The establishment of a monopsony framework for purchase of video services.



Echo from Verizon's 2002 Opposition to the Acquisition of AT&T Cable by Comcast

In its 2002 Petition to Deny Comcast's acquisition of AT&T's cable assets ("Petition to deny of Verizon Telephone Companies and Verizon Internet Solutions d/b/a Verizon.net," before the FCC, Docket MB 02-70, April 30, 2002), Verizon stated:

- 1. The proposed transaction would have monopsony power over the purchase of video programming.
- 2. The transaction would impede internet development by limiting the deployment of an alternative video distribution platform.
- 3. The deal would stifle inter-modal competition.

Verizon was prescient in 2002

Nevertheless Verizon is now asking the FCC to approve a position for itself and its cable allies in 2012 which would produce even more certainly the profoundly harmful outcomes it foresaw in 2002 by creating a coordinated/collaborative/cooperative broadband supply structure capable of wielding considerably greater, broader, and unchallengeable market power than AT&T Comcast possessed at that time.

The Verizon of 2002 would oppose the Verizon of 2012



Recommendation

This transaction between Verizon Wireless and the Four MSOs must be denied.

Thomas Jefferson to George Logan, November 12, 1816:

"I hope we shall take warning from the example and crush in its birth the aristocracy of monied corporations which dare already to challenge our government to a trial of strength and to bid defiance to the laws of their country."



Late Breaking Developments from Last Week (May 15-21, 2012)

WHY WAIT FOR FCC AND DOJ APPROVAL?

TWO GREAT COMPANIES. ONE GREAT OFFER.

Verizon Wireless and XFINITY® from Comcast are teaming up to give you TV, home phone, Internet and wireless service.



XFINITY Voice home phone

30 Rock available at xfinityTV.com

Source: <u>www.verizonwireless.com/xfinity</u> (accessed May 20, 2012)

Is this an effort to create facts on the ground before a decision is rendered? Can this activity be halted?



Will the Real Comcast and David Cohen Please Stand Up?

March 8, 2012 -- David Cohen, <u>Politico:</u>: "The transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements."

May 15, 2012 ex parte at the Commission--David Cohen and Kathryn Zachem of Comcast: "the parties's <u>separate</u> commercial agreements do not raise anti-competitive concerns and will benefit consumers."

Comcast's Streampix offering (included in VZW's marketing of its video services) delivered over the same physical facilities as its Broadband Internet Access Service raises anti-competitive concerns for firms such as Netflix as foreseen in Paragraphs 95 and 96 of the FCC's Memorandum Opinion and Order of January 18, 2011 in Proceeding MB 10-56 governing the acquisition of NBC Universal by Comcast